

By: Brimer

S.B. No. 908

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the continuation and functions of the State Office of
3 Risk Management.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 412.011, Labor Code, is amended by
6 adding Subsections (f), (g), (h), and (i) to read as follows:

7 (f) The office shall work with each state agency to develop
8 an agency-level business continuity plan under Section 412.054.

9 (g) The office shall make available to each agency subject
10 to Section 412.054 guidelines and models for each element listed in
11 Section 412.054. The office shall assist the agency as necessary to
12 ensure that:

13 (1) agency staff understands each element of the
14 business continuity plan developed under Section 412.054; and

15 (2) each agency practices implementation of the plan.

16 (h) The office and the Texas Building and Procurement
17 Commission shall adopt a memorandum of understanding that:

18 (1) includes the type, amount, and frequency of
19 safety-related information that may be shared between the office
20 and the commission; and

21 (2) designates points of contact within the office and
22 the commission to coordinate the sharing of information.

23 (i) The office shall:

24 (1) maintain a system to promptly and efficiently act

1 on complaints filed with the office;

2 (2) maintain information about parties to the
3 complaint, the subject matter of the complaint, a summary of the
4 results of the review or investigation of the complaint, and
5 disposition of the complaint;

6 (3) make information available describing the office's
7 procedures for complaint investigation and resolution; and

8 (4) periodically notify the complaint parties of the
9 status of the complaint until final disposition.

10 SECTION 2. Subchapter B, Chapter 412, Labor Code, is
11 amended by adding Sections 412.0125 through 412.0128 to read as
12 follows:

13 Sec. 412.0125. RETURN-TO-WORK COORDINATION SERVICES; CASE
14 MANAGEMENT. (a) The office shall provide each state agency with
15 return-to-work coordination services as necessary to facilitate an
16 injured employee's return to employment. The office shall notify
17 each state agency of the availability of return-to-work
18 coordination services.

19 (b) As part of return-to-work coordination services under
20 this section, the office shall:

21 (1) establish a time frame for case management of an
22 injured employee that ensures services are provided to the injured
23 employee as soon as practicable to improve the employee's chance of
24 returning to work as quickly as possible;

25 (2) provide guidance to each state agency to identify
26 appropriate services for an injured employee;

27 (3) adopt rules that set standards and provide

1 guidance to a state agency interacting with an injured employee;
2 and

3 (4) implement any other services provided under
4 Section 413.021 that will facilitate the reintegration of an
5 injured employee.

6 Sec. 412.0126. ANALYSIS. (a) The board shall adopt rules
7 as necessary to collect data on lost time and return-to-work
8 outcomes of each state agency to allow full evaluations of
9 successes and of barriers to achieving timely return to work after
10 an injury.

11 (b) The office shall:

12 (1) collect and analyze data from each state agency
13 regarding lost time, including sick leave and annual leave used by
14 an injured employee;

15 (2) identify state agencies that need additional
16 training or case management services related to return-to-work
17 services;

18 (3) modify as necessary the office's assessment
19 computation to encourage state agencies to effectively reduce
20 workers' compensation costs;

21 (4) incorporate as necessary return-to-work goals
22 developed by the division of workers' compensation under Section
23 413.025;

24 (5) work with the workers' compensation research and
25 evaluation group to develop analytical tools to assist the office
26 with its duties under this section;

27 (6) require state agencies to report information in a

1 standardized format;

2 (7) monitor the information reported by each state
3 agency; and

4 (8) evaluate the information provided under this
5 section to determine outcomes over time for each state agency.

6 Sec. 412.0127. PAYMENT BY ELECTRONIC FUNDS TRANSFER. (a)
7 Except as provided by Subsection (b), the office shall pay an
8 employee entitled to an indemnity benefit payment using the same
9 payment method as the method by which the employee receives the
10 employee's wages.

11 (b) The office shall adopt rules to facilitate the use of
12 electronic funds transfer as the preferred method of payment under
13 this section.

14 (c) The office may issue an indemnity benefit payment by
15 check on request or if electronic funds transfer is not feasible.

16 Sec. 412.0128. STUDY ON CATASTROPHIC CLAIMS. (a) The
17 office shall study options to prepare state agencies for
18 catastrophic claims.

19 (b) The study must include information on:

20 (1) establishing a state employee workers'
21 compensation catastrophe fund outside the state treasury;

22 (2) purchasing catastrophe reinsurance; and

23 (3) other options to prepare the state for
24 catastrophic claims.

25 (c) In performing duties under Subsections (a) and (b), the
26 office:

27 (1) shall work with the workers' compensation research

1 and evaluation group; and

2 (2) may contract with a consultant to:

3 (A) analyze predicted costs of potential
4 disasters; and

5 (B) estimate the appropriate size for a
6 catastrophe fund or level of reinsurance.

7 (d) Not later than September 1, 2008, the office shall
8 report the findings of the study conducted under this section to the
9 lieutenant governor, the speaker of the house of representatives,
10 and the appropriate standing committees of the house of
11 representatives and senate with responsibility for oversight of the
12 office.

13 (e) This section expires September 2, 2008.

14 SECTION 3. Section 412.021, Labor Code, is amended by
15 adding Subsections (a-1), (g), and (h) and amending Subsections (d)
16 and (f) to read as follows:

17 (a-1) A person may not be a member of the board if the person
18 or the person's spouse:

19 (1) is registered, certified, or licensed by a
20 regulatory agency in the field of insurance or health care;

21 (2) is employed by or participates in the management
22 of a business entity or other organization regulated by or
23 receiving money from the office;

24 (3) owns or controls, directly or indirectly, more
25 than a 10 percent interest in a business entity or other
26 organization regulated by or receiving money from the office; or

27 (4) uses or receives a substantial amount of tangible

1 goods, services, or money from the office other than compensation
2 or reimbursement authorized by law for risk management board
3 membership, attendance, or expenses.

4 (d) The governor shall designate one member of the board as
5 presiding officer. The presiding officer shall serve in that
6 capacity at the pleasure of the governor [~~for a two-year term~~].

7 (f) The risk management board and the office are [~~is~~]
8 subject to Chapter 325, Government Code (Texas Sunset Act). Unless
9 continued in existence as provided by that chapter, the board is
10 abolished and this section expires September 1, 2019 [~~2007~~].

11 (g) Appointments to the board shall be made without regard
12 to the race, color, disability, sex, religion, age, or national
13 origin of the appointee.

14 (h) The board shall develop and implement policies that
15 clearly separate the policymaking responsibilities of the board and
16 the management responsibilities of the director and the staff of
17 the risk management office.

18 SECTION 4. Section 412.022, Labor Code, is amended to read
19 as follows:

20 Sec. 412.022. TRAINING PROGRAM FOR BOARD MEMBERS. (a) A
21 person who is appointed to and qualifies for office as a member of
22 the board may not vote, deliberate, or be counted as a member in
23 attendance at a meeting of the board until the person completes a
24 training program that complies with this section [~~To be eligible to~~
25 ~~take office as a member of the board, a person appointed to the~~
26 ~~board must complete at least one course of a training program that~~
27 ~~complies with this section. If the course has not been completed at~~

1 ~~the time of the appointment, the training program is to be completed~~
2 ~~within six months from the date of appointment, failure of which~~
3 ~~constitutes grounds for removal from the board].~~

4 (b) A training program established under this section must
5 provide information to the member regarding:

6 (1) the enabling legislation that created the office
7 and the office's programs, functions, rules, and budget ~~[board];~~

8 (2) the results of the most recent formal audit of the
9 office ~~[the program operated by the board];~~

10 (3) the requirements of laws relating to open
11 meetings, public information, administrative procedure, and
12 conflicts of interest ~~[the role and functions of the board]; and~~

13 (4) ~~[the rules of the board, with an emphasis on the~~
14 ~~rules that relate to disciplinary and investigatory authority;~~

15 ~~[(5) the current budget for the board;~~

16 ~~[(6) the results of the most recent formal audit of the~~
17 ~~board;~~

18 ~~[(7) the requirements of:~~

19 ~~[(A) the open meetings law, Chapter 551,~~
20 ~~Government Code;~~

21 ~~[(B) the public information law, Chapter 552,~~
22 ~~Government Code; and~~

23 ~~[(C) the administrative procedure law, Chapter~~
24 ~~2001, Government Code;~~

25 ~~[(8) the requirements of the conflict of interest laws~~
26 ~~and other laws relating to public officials; and~~

27 ~~[(9)] any applicable ethics policies adopted by the~~

1 office [~~board~~] or the Texas Ethics Commission.

2 (c) A person appointed to the board is entitled to
3 reimbursement, as provided by the General Appropriations Act, for
4 the travel expenses incurred in attending the training program
5 regardless of whether the attendance at the program occurs before
6 or after the person qualifies for office.

7 SECTION 5. Section 412.023, Labor Code, is amended to read
8 as follows:

9 Sec. 412.023. EFFECT OF LOBBYING ACTIVITY. (a) In this
10 section, "Texas trade association" means a cooperative and
11 voluntarily joined statewide association of business or
12 professional competitors in this state designed to assist its
13 members and its industry or profession in dealing with mutual
14 business or professional problems and in promoting their common
15 interest.

16 (b) A person may not be a member of the board and may not be
17 an employee of the office employed in a "bona fide executive,
18 administrative, or professional capacity," as that phrase is used
19 for purposes of establishing an exemption to the overtime
20 provisions of the federal Fair Labor Standards Act of 1938 (29
21 U.S.C. Section 201 et seq.) if:

22 (1) the person is an officer, employee, or paid
23 consultant of a Texas trade association in the field of insurance or
24 health care; or

25 (2) the person's spouse is an officer, manager, or paid
26 consultant of a Texas trade association in the field of insurance or
27 health care.

1 (c) A person may not serve as a member of the board or act as
2 the general counsel to the board if the person is required to
3 register as a lobbyist under Chapter 305, Government Code, because
4 of the person's activities for compensation on behalf of a
5 profession related to the operation of the office [~~that is~~
6 ~~regulated by or that has fees regulated by the board~~].

7 SECTION 6. Section 412.024, Labor Code, is amended by
8 amending Subsection (a) and adding Subsection (a-1) to read as
9 follows:

10 (a) It is a ground for removal from the board if a member:

11 (1) does not have at the time of taking office
12 [~~appointment~~] the qualifications required by [~~for appointment to~~
13 ~~the board other than the requirements of~~] Section 412.021
14 [~~412.022~~];

15 (2) does not maintain during service on the board the
16 qualifications required by Section 412.021 [~~for appointment to the~~
17 ~~board~~];

18 (3) is ineligible for membership under Section 412.021
19 or [~~violates a prohibition established by Section~~] 412.023;

20 (4) cannot because of illness or incapacity discharge
21 the member's duties for a substantial part of the member's term [~~for~~
22 ~~which the member is appointed~~]; or

23 (5) is absent from more than half of the regularly
24 scheduled board meetings that the member is eligible to attend
25 during a calendar year without an excuse approved by a majority vote
26 of the board.

27 (a-1) The validity of an action of the board is not affected

1 by the fact that it is taken when a ground for removal of a board
2 member exists.

3 SECTION 7. Subchapter C, Chapter 412, Labor Code, is
4 amended by adding Section 412.027 to read as follows:

5 Sec. 412.027. USE OF TECHNOLOGY. The board shall implement
6 a policy requiring the office to use appropriate technological
7 solutions to improve the office's ability to perform its functions.
8 The policy must ensure that the public is able to interact with the
9 office on the Internet.

10 SECTION 8. Section 412.032, Labor Code, is amended to read
11 as follows:

12 Sec. 412.032. BOARD'S REPORT TO LEGISLATURE. (a) Based on
13 the recommendations of the director, the board shall report to each
14 legislature relating to:

15 (1) methods to reduce the exposure of state agencies
16 to the risks of property and liability losses, including workers'
17 compensation losses;

18 (2) the operation, financing, and management of those
19 risks; ~~and~~

20 (3) the handling of claims brought against the state;

21 (4) return-to-work outcomes under Section 412.0126
22 for each state agency; and

23 (5) the business continuity plan developed by each
24 state agency under Section 412.054.

25 (b) The report must include:

26 (1) the frequency, severity, and aggregate amount of
27 open and closed claims in the preceding biennium by category of

1 risk, including final judgments;

2 (2) the identification of each state agency that has
3 not complied with the risk management guidelines and reporting
4 requirements of this chapter; ~~and~~

5 (3) recommendations for the coordination and
6 administration of a comprehensive risk management program to serve
7 all state agencies, including recommendations for any necessary
8 statutory changes;

9 (4) a report of outcomes by state agency of lost time
10 due to employee injury and return-to-work programs based on the
11 information collected and analyzed by the office in Section
12 412.0126; and

13 (5) an evaluation of the business continuity plan
14 developed by a state agency under Section 412.054 for completeness
15 and viability.

16 SECTION 9. Subchapter D, Chapter 412, Labor Code, is
17 amended by adding Section 412.034 to read as follows:

18 Sec. 412.034. PUBLIC HEARING. The board shall develop and
19 implement policies that provide the public with a reasonable
20 opportunity to appear before the board and to speak on any issue
21 under the jurisdiction of the office.

22 SECTION 10. Subchapter D, Chapter 412, Labor Code, is
23 amended by adding Section 412.035 to read as follows:

24 Sec. 412.035. DISPUTE RESOLUTION. (a) The board shall
25 develop and implement a policy to encourage the use of:

26 (1) negotiated rulemaking procedures under Chapter
27 2008, Government Code, for the adoption of office rules; and

1 (2) appropriate alternative dispute resolution
2 procedures under Chapter 2009, Government Code, to assist in the
3 resolution of internal and external disputes under the office's
4 jurisdiction.

5 (b) The office's procedures relating to alternative dispute
6 resolution must conform, to the extent possible, to any model
7 guidelines issued by the State Office of Administrative Hearings
8 for the use of alternative dispute resolution by state agencies.

9 (c) The board shall designate a trained person to:

10 (1) coordinate the implementation of the policy
11 adopted under Subsection (a);

12 (2) serve as a resource for any training needed to
13 implement the procedures for negotiated rulemaking or alternative
14 dispute resolution; and

15 (3) collect data concerning the effectiveness of those
16 procedures, as implemented by the office.

17 SECTION 11. Subchapter F, Chapter 412, Labor Code, is
18 amended by adding Section 412.054 to read as follows:

19 Sec. 412.054. BUSINESS CONTINUITY PLAN. (a) Each state
20 agency shall work with the office to develop an agency-level
21 business continuity plan that outlines procedures to keep the
22 agency operational in case of disruptions to production, finance,
23 administration, or other essential operations. The plan must
24 include detailed information regarding resumption of essential
25 services after a catastrophe, including:

26 (1) coordination with public authorities;

27 (2) management of media;

1 (3) customer service delivery;

2 (4) assessing immediate financial and operational
3 needs; and

4 (5) other services as determined by the office.

5 (b) A business continuity plan is considered to meet the
6 requirements of this section if the agency forwards the plan to the
7 office for review and the agency is:

8 (1) involved in the delivery of emergency services as
9 a member of the governor's Emergency Management Council; or

10 (2) part of the State Data Center program.

11 SECTION 12. Section 417.0082, Government Code, is amended
12 to read as follows:

13 Sec. 417.0082. PROTECTION OF CERTAIN STATE-OWNED BUILDINGS
14 AGAINST FIRE HAZARDS. (a) The state fire marshal, under the
15 direction of the commissioner, shall take any action necessary to
16 protect a public building under the charge and control of the Texas
17 Building and Procurement [~~General Services~~] Commission, and the
18 building's occupants, against an existing or threatened fire
19 hazard. The state fire marshal and the Texas Building and
20 Procurement Commission shall include the State Office of Risk
21 Management in all communication concerning fire hazards.

22 (b) The commissioner, [~~and~~] the Texas Building and
23 Procurement Commission, and the risk management board [~~General~~
24 ~~Services Commission~~] shall make and each adopt by rule a memorandum
25 of understanding that coordinates the agency's duties under this
26 section.

27 SECTION 13. A state agency shall develop a business

1 continuity plan under Section 412.054, Labor Code, as added by this
2 Act, not later than May 1, 2008.

3 SECTION 14. Section 412.0127, Labor Code, as added by this
4 Act, applies to indemnity benefit payments made on or after
5 February 1, 2008.

6 SECTION 15. This Act takes effect September 1, 2007.